

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FILED  
CLERKS OFFICE  
2004 JUL -1 P 12:19

MASSACHUSETTS TEACHERS ASSOCIATION,  
et al.,

Plaintiffs,

v.

DAVID P. DRISCOLL, as he is the Chairman of the  
Massachusetts Teachers Retirement Board, et al.,

Defendants.

CIVIL ACTION  
NO. 04-10910-EFH

**STIPULATION AND JOINT MOTION**  
**TO SET DISCOVERY AND BRIEFING SCHEDULE**

**INTRODUCTION**

Plaintiffs brought this action challenging the repeal of the so-called spousal benefit statute, G.L. c. 32, § 5(1), which prior to its repeal provided that where a husband and wife are both members of Massachusetts public retirement systems and one of the two members has retired, the other member may retire for superannuation irrespective of age. Plaintiffs claim that the repeal of the statute as applied to members in service prior to the effective date of the repeal, violates the Contracts Clause and the Takings Clause of the United States Constitution. Defendants intend to oppose plaintiffs' claims on a variety of grounds. The parties have worked collaboratively to structure a suitable discovery schedule with the hope and expectation that the case can be presented to the Court on an agreed statement of facts. The have requested a status conference for the purpose of setting a discovery and briefing schedule.

### **STIPULATION**

Defendants David P. Driscoll, as he is the chairman of the Massachusetts Teachers Retirement Board, et al. (collectively, "defendants") and plaintiffs the Massachusetts Teachers Association, et al. ("plaintiffs") hereby stipulate as follows:

1. Plaintiffs hereby stipulate that defendants need not respond to the Complaint for Declaratory and Injunctive Relief (the "Complaint") except as set forth in the attached proposed schedule, and that their failure to do so shall not be taken as a default or otherwise as a waiver of their right to respond to the Complaint.

2. Plaintiffs and defendants further agree to attempt to stipulate to facts necessary to the Court's decision in this matter.

### **JOINT MOTION**

In light of the nature of plaintiffs' action, which involves significant issues of law and fewer issues of fact, plaintiffs and defendants respectfully request that this Court enter the attached schedule for discovery, stipulation and briefing as an Order of the Court and relieve the parties of the obligations imposed under the Federal Rules of Civil Procedures and the Local

Rules of the District Court to the extent that they are inconsistent with the attached schedule.

Respectfully submitted,

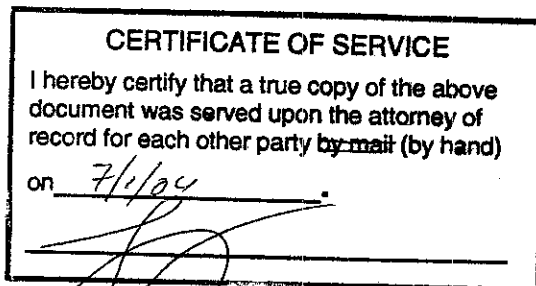
MASSACHUSETTS TEACHERS  
ASSOCIATION, et al.,

By their attorneys,

COSGROVE, EISENBERG & KILEY, P.C.

*Carl Valvo / J.L.W.*

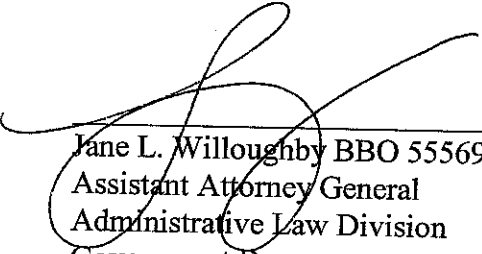
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DAVID P. DRISCOLL, as he is Chairman  
of the Massachusetts Teachers Retirement  
Board, et al.,

By their attorneys,

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Dated: July 1, 2004

**DRAFT PROPOSED SCHEDULE**

July 1

Deadline for written discovery requests

Deadline for R. 30(b)(6) deposition notice and subpoena duces tecum to State Retirement Board.

Deposition August 17-19

July 12

Defendants' response to Complaint

August 31

Defendants' and plaintiffs' responses to written discovery due

September 9

Motions to compel, if any, filed

September 16

Responses to motions to compel filed

October 21

Draft statement of agreed facts to defendants

November 5

Defendants' response to draft statement of agreed facts

November 12

If statement of agreed facts not completed, deposition notice deadline (all parties). Minimum 14 days' notice.

The later of either January 12 or 40 days following sign-off on full statement of agreed facts or, in the event of no or partial statement of agreed facts, receipt of deposition transcripts

Plaintiffs' Rule 56 motion and memorandum

40 days following service of Rule 56 motion

Defendants' opposition and motions, if any

10 days following service of defendants' opposition and motions, if any

Plaintiffs' discovery (written or deposition) concerning facts relating to any defense not specifically disclosed to plaintiffs prior to September 9, 2003

25 days following defendants' opposition or completion of discovery (including motions to compel) relating to new defenses, whichever is later

Plaintiff's reply

TBD

Hearing on Rule 56 motion(s)